STATE OF MICHIGAN

COURT OF APPEALS

ELISE EMRICK, Plaintiff-Appellee,	UNPUBLISHED April 17, 2014
v	No. 314038 Wayne Circuit Court
MENARD BUILDERS, INC., Defendant-Appellant,	LC No. 11-007466-CK
and ERIC COLTHURST, Defendant.	

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

Defendant, Menard Builders, Inc., appeals as of right the circuit court's order entering judgment on an arbitration award in favor of plaintiff, Elise Emrick. We affirm.

I. FACTS

A. BACKGROUND FACTS

On January 25, 1995, the parties entered into a land contract under which Menard Builders agreed to purchase property from Emrick. The parties amended the contract several times between 1995 and 2006. In August 2010, Menard Builders informed Emrick that it could no longer fulfill the land contract's terms.

Emrick filed a complaint, alleging that Menard Builders (1) breached the land contract by failing to pay principal and interest and (2) improperly obtained a mortgage on five of the six lots, which it then lost through foreclosure. Emrick sought compensation for breach of contract, and also sought to quiet title to the sixth lot, on which her home was built.

B. PROCEDURAL HISTORY

On July 13, 2012, the parties stipulated to binding arbitration. The trial court's order provided that "[Emrick] and Defendant Menard Builders shall submit to binding arbitration to be completed within 90 days before [the arbitrator]." The order did not mention the Michigan Arbitration Act.[1] On October 26, 2012, the arbitrator issued an award in favor of Emrick. The arbitrator's award quieted title of the sixth lot and offset the value of that lot against the amount for which Menard Builders was liable to Emrick for breach of contract.

On November 8, 2012, Emrick moved for entry of judgment on the arbitration award. Menard Builders challenged the award, asserting that the trial court must vacate it because the arbitrator lacked jurisdiction to decide Emrick's quiet title claim under MCL 600.5005. Menard Builders also asserted that the arbitrator had exceeded his authority by contravening the doctrine of election of remedies when he afforded Emrick both legal and equitable remedies. After a hearing, the trial court granted Emrick's motion and entered judgment on the award.

II. THE ARBITRATOR'S JURISDICTION

A. STANDARD OF REVIEW

This Court reviews de novo the trial court's decision to enforce an arbitration award.[2] A court's review of an arbitrator's award is very limited.[3] A reviewing court cannot interpret the contract and must accept the arbitrator's factual findings and decisions on the merits.[4] Our review is limited to determining whether the arbitrator acted within the scope of his or her contract.[5] We review de novo whether an arbitrator exceeded his or her authority.[6]

B. LEGAL STANDARDS

MCR 3.602(J)(2)(c) provides that the trial court must vacate an arbitration award when "the arbitrator exceeded his or her powers[.]" An arbitrator exceeds his or her powers when the arbitrator (1) acted beyond the material terms of the arbitration contract, or (2) his or her decision contravenes controlling principles of law in a way that materially prejudices the rights of the parties.[7]

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[1] MCL 600.5001 *et seq*., now repealed by 2012 PA 370.

[2] *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005); *City of Ann Arbor v AFSCME Local 369*, 284 Mich App 126, 144; 771 NW2d 843 (2009).

[3] *City of Ann Arbor*, 284 Mich App at 144.

[4] *Id*.

[5] *Id*.

[6] *Miller*, 474 Mich at 30; *Washington v Washington*, 283 Mich App 667, 672; 770 NW2d 908 (2009).

[7] *Washington*, 283 Mich App at 672.

C. SCOPE OF THE ARBITRATOR'S POWERS

Menard Builders contends that the arbitrator exceeded the scope of his powers because MCL 600.5005 prohibits the arbitrator from making an award involving property claims. We disagree.

MCL 600.5005 was part of the Michigan Arbitration Act, which was valid during proceedings in this case but has now been repealed.[8] The Michigan Arbitration Act governed statutory arbitration.[9] "For an agreement to qualify for statutory arbitration, it must meet the requirements contained in the statute."[10] The parties' arbitration agreement must be in writing and "include the requirement that a circuit court may enter judgment on the award."[11] If the parties' agreement to arbitration did not comply with MCL 600.5001, the parties agreed to a common-law arbitration.[12] Specifically, "MCL 600.5005 does not apply to or restrict a common-law arbitration."[13]

Here, the parties' stipulation to arbitrate was not in writing and did not designate a court in which judgment would be entered on the award. Thus, the parties agreed to common-law arbitration because their agreement did not comply with the Michigan Arbitration Act's requirements. MCL 600.5005 does not apply to common-law arbitrations, and thus we conclude that it did not restrict the arbitrator's authority in this case.

D. CONTRAVENTION OF CONTROLLING LAW

Menard Builders contends that the arbitrator's decision contravened controlling principles of law because the arbitrator's award allowed Emrick to pursue inconsistent remedies and led to a double recovery. We disagree.

The doctrine of election of remedies is a procedural rule that prevents a party from pursuing inconsistent remedies.[14] The purpose of the doctrine is to prevent a double recovery for a single injury.[15] The doctrine only applies if three prerequisites are met:

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[8] 2012 PA 370, effective July 1, 2013.

[9] *In re Nestorovski Estate*, 283 Mich App 177, 197; 769 NW2d 720 (2009).

[10] *Id*. at 197-198.

[11] *Id*. at 200.

[12] *Id*. at 198 (quotation marks and citation omitted).

[13] *Id*. at 200.

[14] *Riverview Coop, Inc v First Nat Bank & Trust Co of Michigan*, 417 Mich 307, 311; 337 NW2d 225 (1983).

[15] *Id*.

> (1) at the time of the election, there must have been two or more remedies available; (2) the alternative remedies must be inconsistent rather than consistent and cumulative; and (3) the party must have chosen and pursued one remedy to the exclusion of the other(s).[16]

The doctrine only bars remedies that are "opposite and irreconcilable . . . . [O]ne remedy must allege as fact what the other denies, or . . . the theory of one must necessarily be repugnant to the other."[17] A plaintiff may pursue different legal remedies, as long as the plaintiff does not receive a double recovery.[18]

Here, the doctrine of election of remedies does not apply because Emrick did not receive a double recovery. Emrick sought to quiet title to the sixth lot, and sought damages for Menard Builders's breach of the land contract on the other lots. The arbitrator quieted Emrick's title to the sixth lot, but offset the value of that parcel against Emrick's recovery for breach of contract on all the parcels. Thus, the arbitrator did not compensate Emrick for the breach of contract on the sixth lot. The arbitrator did compensate Emrick for the breach of contract related to the five other lots involved in the land contract, but did not quiet title to those lots.

We conclude that Emrick's remedies were consistent and cumulative. Because Emrick did not receive a double recovery, we conclude that the arbitrator's decision did not contravene the doctrine of election of remedies.

III. CONCLUSION

We conclude that the arbitrator did not act outside the scope of his authority and his decision did not contravene controlling law. Therefore, the trial court properly declined to vacate the arbitrator's award, and properly confirmed the award.

We affirm.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly

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[16] *Barclae v Zarb*, 300 Mich App 455, 486; 834 NW2d 100 (2013) (quotation marks and citation omitted).

[17] *Production Finishing Corp v Shields*, 158 Mich App 479, 494; 405 NW2d 171 (1987), quoting 25 Am Jur 2d, Election of Remedies, § 8, pp 653-654.

[18] See *Barclae*, 300 Mich App at 486.